IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10582 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHUPATBHAI LAXMANBHAI SAVANI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10582 of 2001

MS. BELA PRAJAPATI for MR BM MANGUKIYA for Petitioner No. 1

MR S.S.PATEL, ASSTT.GOVERNMENT PLEADER for Respondents No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 29/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 25th August, 2001 passed by the Commissioner of Police, Surat in exercise of power under Section 3 of the

PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered one offence registered at Kapodara Police Station against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonymous witnesses and have come to the conclusion that the activity of the detenu is anti-social and detrimental to public health and public order.

3. It is contended by learned Advocate Ms. Bela Prajapati that some of the documents supplied to the detenu are not legible. She has drawn attention to page 48 of the compilation in support of her contention. She also contended that there is improper exercise of power under Section 9(2) of the PASA Act.

3.1 She further submitted that so far as statements are concerned, the authority has exercised powers under Sec. 9(2) of the PASA Act, in absence of any cogent material. No exercise is undertaken to verify whether the fear expressed by the witnesses is genuine or imaginery. This improper exercise of powers of claiming privilege under Sec. 9(2) of the PASA Act has also affected the right of the detenu of making an effective representation. She therefore urged that the petition may be allowed.

4. Learned Assistant Government Pleader Mr. S.S. Patel has opposed to this petition. However, after verifying page 48 of the compilation, in all fairness he concedes that the said page is not legible. That page relates to bail application in respect of the registered offence.

5. Having regard to the rival side contentions, it is amply clear that the satisfaction recorded by the detaining authority is not on basis of any cogent material. As observed by the Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1981 GLR 1186, the authority is expected to consider the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be enquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or

fanciful or that it is not merely an empty excuse invented by the informant, inter alie, to protect himself against the falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu.

5.1 In order to meet with this requirement, the detaining authority would be required to undertake a further exercise in addition to examining the anonymous witnesses. There is nothing to indicate that such an exercise is undertaken. A witness who has stated something before the functioning authority is bound to stick to his version before the detaining authority when he is summoned for verification, but what is stated by him is correct and genuine or not can be tested only after his version is cross-checked through other sources by undertaking further exercise. That having not been done, the subjective satisfaction cannot be said to have been recorded on the basis of any material and therefore, there is improper exercise of power under Section 9(2) of the PASA Act.

5.2 It would also be proper to record that while exercising powers under Section 9(2) of the PASA Act, the authority is expected to weigh the constitutional right of the detenu on one hand and the public interest on the other and only if the public interest out-ways the constitutional right of the detenu, the power under Section 9(2) can be exercised. This would also call for some exercise, which is required to be indicated and that not having been done, the order of detention cannot be permitted to stand. The continued detention of the detenu therefore, is vitiated. The petition deserves to be allowed and the same is allowed.

6. The petition is therefore, allowed. Order of detention dated 25th August, 2001 passed by the Commissioner of Police, Surat is quashed and set aside. Detenu Bhupatbhai Laxmanbhai Savani be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas